vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3883 OF 2005

Manik Namdeo Bhalinge ... Petitioner

V/s.

Avinash Wamanrao Dahanukar & Ors. ... Respondents

Mr.N.V. Walawalkar for Petitioner
Mr.P.K. Dhakephalkar for Respondent No.1

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **SEPTEMBER 28, 2005**

P.C.:

. The Petition challenges the concurrent findings of fact of both the Courts below. Both the Courts have found that the respondent No.1 bonafide and reasonably requires the suit premises.

2. The criticism of the learned Counsel for the Petitioner against the order of the appellate Court is that the appellate Court has not disclosed any critical appreciation of the evidence which was there before the trial Court and has mechanically confirmed the findings. For this, he relies on the judgment of the Supreme Court in *State of Rajasthan v/s. Harphool Singh,* **(2000) 5 SCC 652** to submit that the appellate Court must give cogent reasons after appreciating the evidence on record as to

why the order of the trial Court is being confirmed. It is also submitted that neither the trial Court nor the appellate Court have considered whether the premises are required bonafide and reasonably. Reliance is also placed on the judgment of the Supreme Court in the case of *M.S. Zahed v/s. K. Raghavan,* **(1999) 1 SCC 439** for this proposition.

3. The propositions of law enunciated in the aforesaid judgments cannot be disputed. However, in the present case, the trial Court has given adequate reasons for arriving at the conclusion that the premises are required both bonafide and reasonably. The appellate Court has, in my view, considered the evidence on record and has come to the conclusion that the order of the trial Court needs no interference. In my view, both the Courts have found that the plaintiff wants to start a business of a lodging house and therefore, rejected the respondents' case. I find no infirmity in the orders of the Courts below. Both the Courts have held that the suit premises are bonafide and reasonably required by the landlord. The comparative hardship has also been considered by the Courts. Petition rejected.

4. Mr.Walawalkar requests for stay of this order for eight weeks. Stay granted for eight weeks on

condition that the Petitioner files an undertaking within two weeks from today that he will not create any third party rights in the suit premises and will hand over the vacant and peaceful possession of the suit premises immediately after the result in any further proceedings.